

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 16-cv-02754-WYD-NYW

KIRSTIN KURLANDER,  
on behalf of herself and others similarly situated,

Plaintiff,

v.

KROENKE ARENA COMPANY, LLC

Defendant.

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**CONSENT DECREE**

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This Consent Decree is made this 28<sup>th</sup> day of December, 2017, by Kirstin Kurlander (“Named Plaintiff”) by and on behalf of a class of similarly situated persons, and Kroenke Arena Company (“Defendant” or “KAC”) (collectively, the “Parties”).

**RECITALS**

WHEREAS, Named Plaintiff, individually and on behalf of a class of similarly situated persons, filed the instant class action lawsuit against KAC requesting open captioning at sporting events at the Pepsi Center pursuant to Title III of the Americans with Disabilities Act (“ADA”), as amended, 42 U.S.C. § 12181 *et seq.* (the “Lawsuit”);

WHEREAS, KAC has already begun to provide captioning through a website or app accessible to Pepsi Center patrons throughout the Arena on patron-owned smart phones or other wifi-capable devices, as well as three Arena-owned iPads/notebooks available for patron checkout. This app is useable on most smart phones, including Droid, iPhone and Blackberry Torch;

WHEREAS, KAC already provides sign language interpreter services to Pepsi Center patrons upon request;

WHEREAS, KAC enters this Decree for the purposes of making the Pepsi Center more inclusive and enjoyable to all people, avoiding the time, risk, and expense of defending protracted litigation, and resolving finally and completely the pending and potential claims of the Named Plaintiff and the Class;

**EXHIBIT 1**

WHEREAS, the Parties anticipate entering into a separate settlement agreement finally resolving the individual pending and potential claims of the Named Plaintiff that are not Class claims;

WHEREAS, KAC denies any and all liability or wrongdoing to the Named Plaintiff and to the Class and by entering into this Decree, KAC does not admit any impropriety, wrongdoing, or liability of any kind whatsoever, including as to the claims raised in the Lawsuit;

WHEREAS, the Parties have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the Lawsuit;

WHEREAS, the Parties have engaged in extensive, arms-length negotiations;

WHEREAS, based upon extensive analysis of the facts and the law applicable to the Lawsuit, and taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Class, Class Counsel has concluded that this Decree provides substantial benefit to the Class and is fair, reasonable, and adequate and in the best interest of the Named Plaintiff and the Class; and

WHEREAS, the Parties desire to settle the claims asserted in the Lawsuit and to enter into a Consent Decree related to the Lawsuit and the claims giving rise thereto, in accordance with the provisions and upon the terms and conditions hereafter set forth, the Parties agree as follows.

### AGREEMENT

#### **I. CONDITIONS PRECEDENT.**

This Consent Decree shall be conditioned upon and shall be effective only upon, the occurrence of all the following events (“Effective Date”):

- A. Class Counsel shall make, and KAC shall not oppose, the Court filings described in Paragraph VII;
- B. Grant by the Court of preliminary approval of this Decree and approval of the notice program proposed in Paragraph VIII of this Consent Decree;
- C. Notice to the Class in accordance with Paragraph VIII of this Consent Decree;
- D. A Final Approval Hearing held in accordance with Paragraph VII of this Consent Decree;
- E. Final approval of this Consent Decree by the Court following a Final Approval Hearing; and
- F. Expiration of the time to appeal the Final Approval without the filing of an appeal; or, if an appeal is filed, final adjudication or resolution of the same.

## **II. DEFINITIONS.**

- A. “Aural Content” means all content spoken over the public address system in the Pepsi Center during Covered Events, whether live or pre-recorded.
- B. “Class” means all Pepsi Center patrons who are deaf or hard of hearing and unable to hear using assistive listening devices, who have been, since November 10, 2014, or in the future will be, denied full and equal enjoyment of the goods, services, facilities, advantages, or accommodations of the Pepsi Center based on Defendant’s failure to provide open captioning of aural content during non-concert events for which the center-hung display is used.
- C. “Class Counsel” means attorneys with the Civil Rights Education and Enforcement Center (“CREEC”).
- D. “Court” means the United States District Court for the District of Colorado.
- E. “Covered Event” means any non-concert event for which the center-hung display is used, and includes, but is not limited to, all preseason, regular season, and playoff Avalanche, Nuggets, and Mammoth games, the Harlem Globetrotters, and Monster Jam.
- F. “Final Approval” means approval of this Consent Decree by the Court pursuant to Fed. R. Civ. P. 23(e).
- G. “KAC” includes Kroenke Arena Company, LLC and any affiliated entities responsible for the ownership or operation of the Pepsi Center.
- H. “Pepsi Center” or “Arena” means the arena located at 1000 Chopper Circle, Denver, Colorado.
- I. “Pre-Programmed Lyrics” means the lyrics of all songs selected or known more than 24 hours before the beginning of the Covered Event.

## **III. CAPTIONING AND INTERPRETATION.**

- A. No later than the date of the first preseason Avalanche game at the Pepsi Center for the 2018-2019 season (“Commencement Date”), KAC will provide captioning of all Pre-Programmed Lyrics and Aural Content at each Covered Event at the Arena starting at the time when Aural Content related to such Covered Event begins to be broadcast in the Arena and ending at the time when Aural Content related to such Covered Event ceases to be broadcast in the Arena.

- B. The captioning referred to in Paragraph III(A) shall be provided on four LED boards (“Boards”) located in the four corners of the Arena on the 300 level fascia as indicated in Exhibit A hereto. Such captioning shall conform to the following:
1. The Boards shall provide sufficient space for two lines of captioning;
  2. The font size of the captions shall be at least 10 inches high; and
  3. Each Board shall provide space for captioning that is at least 45 characters long.
- C. KAC will provide information concerning the captioning services described above:
1. KAC will install signage in and around the Pepsi Center notifying patrons of the availability of captioning and all guest service kiosks will have written materials explaining the options available at the Pepsi Center. KAC will decide the form such signage will take, taking into account the size and design of other signage at the Pepsi Center, provided that such signage will include signs in the vicinity of each public entrance to the Arena sufficient to inform arriving patrons of captioning options.
  2. On the Arena Facts or equivalent webpage (<http://www.pepsicenter.com/arena-info/pepsi-center/arena-facts/>);
  3. In a new version of the Fan Guide online and in print (or equivalent publication) so long as maintained;
  4. In select print and internet advertising for the first year of the consent decree; and
  5. In a joint press release issued by the Parties following preliminary approval of this Consent Decree.

**IV. VERIFICATION AND REPORTING.** The Parties agree as follows:

- A. KAC will retain, at its own expense, a mutually-agreeable third party consultant (the “Independent Monitor”) to monitor the quality of captioning provided pursuant to Paragraph III.
- B. KAC will record the Aural Content for each Covered Event (“Recording”) and will ensure that a transcript is made and preserved of the captions provided for each Covered Event (“Caption Transcript”) during the term of the Consent Decree.
- C. The Parties agree that a Caption Transcript that meets the following standard (the “Standard”) is considered to be compliant with this Consent Decree: The accuracy of the Caption Transcript(s) shall contain or reflect a 90% accuracy minimum threshold. The measurement of the Standard to arrive at a percentage of accuracy

shall not include analysis of the delay in complete captioned text being transmitted on the ribbon boards as compared to the speed of the Recording. While the Parties adopt this Standard, the non-binding goal is to provide captioning that meets a 95% accuracy threshold. The Parties agree that if there is any overlap between Aural Content and Pre-Programmed Lyrics, the Standard shall only apply to the Aural Content.

- D. The Independent Monitor shall review the Audio Recordings and Caption Transcripts for Covered Events and determine whether the Caption Transcript met the Standard. The Independent Monitor will review the following Covered Events:
1. Step 1: The Independent Monitor shall review the second ten consecutive Covered Events following the Commencement Date - with the first ten consecutive Covered Events following the Commencement Date being a soft launch period not subject to monitoring during which the Pepsi Center shall implement and refine the technology necessary for captioning.
  2. Step 2:
    - a. If the second ten consecutive Covered Events meet the Standard, the Independent Monitor shall review three Covered Events randomly selected from the third series of ten Covered Events;
    - b. If any of the second ten consecutive Covered Events do not meet the Standard, the Independent Monitor shall provide suggestions for improvement and a one game opportunity for the Pepsi Center to implement changes if any before continuing to review all ensuing Covered Events until ten consecutive Covered Events meet the Standard, at which point the Independent Monitor shall review three Covered Events randomly selected from the ensuing ten Covered Events;
  3. Step 3:
    - a. If the three randomly selected Covered Events in Step 2 meet the Standard, the Independent Monitor shall review one Covered Event randomly selected from every fifteen Covered Events during the term of this Consent Decree;
    - b. If any of the three randomly selected Covered Events in Step 2 do not meet the Standard, the Independent Monitor shall continue to review three randomly selected Covered Events out of every ten Covered Events until all three meet the Standard, at which point the Independent Monitor shall review one Covered Event randomly selected from every fifteen Covered Events during the term of this Consent Decree.

- E. The Independent Monitor shall report to the Parties monthly on the results of the analysis above, including the number of Covered Events reviewed, the number that met the Standard, the ways in which any Covered Events that did not meet the Standard fell short, and suggestions for improvement. If at any time during the term of this Consent Decree, three or more consecutive Covered Events fail to meet the Standard, KAC shall take reasonable remedial measures to improve compliance with the Standard, which may include reasonable remedial measures, if any, recommended by the Independent Monitor.

**V. TRAINING**

KAC and/or its contractors will train Pepsi Center personnel and other personnel with duties related to Covered Events at the Arena in the policies and procedures necessary to implement this Decree.

**VI. TERM.**

The term of this Decree shall be for a period of three years or the resolution of any disputes pursuant to Paragraph XI, whichever is later.

**VII. COURT APPROVAL.**

- A. Initial Motions. Within ten (10) business days of execution of this Decree, the Named Plaintiff shall file the following submissions. KAC shall not oppose these submissions.
  - 1. Motion for Preliminary Approval of the Consent Decree including:
    - a. Approval of the proposed notice of settlement and notice dissemination to the class as outlined in Paragraph VIII, and a deadline for publication of the notice (the "Notice Deadline") that is no more than ten (10) business days after the grant of preliminary approval or as promptly as permitted by the Court;
    - b. Approval of the procedure for objections to the proposed settlement described in Paragraph VII(B);
    - c. Motion to enjoin members of the Class from initiating or prosecuting any litigation related to the claims resolved by this Consent Decree against KAC pending the Court's entry of Final Order and Judgment; and
    - d. Motion to Set Date for the final approval hearing as set forth in Paragraph VII(C).

- B. Objections. The Parties shall ask the Court to order the following procedures for objections: Any member of the Class may object to the proposed Consent Decree by filing, within one month after the Notice Deadline, written objections with the Clerk of the Court (“Objection Deadline”). Only such objecting Class members shall have the right, if they seek it in their objection, to present objections orally at the Final Approval Hearing. The period between the Notice Deadline and the Objection Deadline shall be known as the “Notice Period.”
- C. Final Approval Hearing. The Named Plaintiff and KAC shall request that a Final Approval Hearing take place two months after the Notice Deadline, or as soon thereafter as the Court may set the hearing.
- D. Motion for Attorneys’ Fees. No later than 15 days prior to the Objection Deadline, Named Plaintiff shall file a motion requesting an award of reasonable attorneys’ fees and costs in the amount agreed to by the Parties in Paragraph IX.
- E. Motion for Final Approval. At least two weeks prior to the final approval hearing, Named Plaintiff shall file, and KAC shall not unreasonably oppose, a mutually acceptable motion seeking final approval of the settlement and responding to any objections to the settlement.

**VIII. NOTICE TO THE CLASS OF THE PROPOSED SETTLEMENT**

- A. No later than the Notice Deadline, the Parties shall issue Notice to the Class as Ordered by the Court. The Parties recommend that the process ordered by the Court be the one described in this Paragraph VIII.
- B. The Parties will recommend to the Court that the Short-Form Notice be substantially in the form of Exhibit B hereto and the Long-Form Notice be substantially in the form of Exhibit C hereto.
- C. KAC shall post the Short-Form Notice at each guest services kiosk at the Pepsi Center for all Covered Events during the Notice Period.
- D. KAC shall make the Long Form Notice available on the websites of the Pepsi Center, the Colorado Avalanche, the Denver Nuggets, and the Colorado Mammoth for the duration of the Notice Period by placing a link to the Long Form Notice on each of the following websites and, where specified, pages:
  - 1. <http://www.pepsicenter.com/>
  - 2. <http://www.pepsicenter.com/arena-info/pepsi-center/arena-facts/>
  - 3. <http://www.pepsicenter.com/content/calendar/>

4. <https://www.nhl.com/avalanche/>
  5. <http://www.nba.com/nuggets/>
  6. <https://www.coloradomammoth.com/>
- E. CREEC shall post the Long-Form Notice on its website and will email it to the organizations listed in Exhibit D hereto with a request that the notice be posted on each organization's website.
- F. The Parties agree that the steps proposed in this Paragraph are reasonably calculated to apprise the Class of the pendency of this settlement.

**IX. ATTORNEYS' FEES.**

- A. The Parties agree that as part of this Consent Decree, and subject to approval by the Court, KAC will pay Class Counsel's reasonable attorneys' fees and costs in an amount not to exceed \$200,000 for work performed through Final Approval.
- B. Attorneys' fees for Verification and Reporting.
1. KAC shall pay Class Counsel's reasonable attorneys' fees and costs for work performed pursuant to Paragraph IV only where the Independent Monitor produces a report indicating that the captioning is not in compliance with the Standard. Class Counsel's reviews of compliant reports by the Independent Monitor will not trigger KAC's obligation to pay Class Counsel's attorney's fees for such review.
  2. Quarterly during the term of this Consent Decree, Class Counsel shall submit to KAC a statement of reasonable attorneys' fees and costs incurred pursuant to Paragraph IV. This statement shall include a statement of the work performed, the persons performing the work, the hourly rate of each such person, and a description of the particular costs incurred. KAC shall pay the amount set forth in the statement within 30 days of receiving the statement. Class Counsel agrees to cap the reasonably attorney's fees and costs incurred pursuant to Paragraph IV at seventy-five thousand dollars (\$75,000.00) over the term of the Consent Decree. Notwithstanding, KAC retains the right to dispute the reasonableness of the fees or costs incurred in connection therewith pursuant to the Dispute Resolution Process.

**X. JUDGMENT AND FINAL APPROVAL.**

- A. At the time of the Final Approval Hearing, the Parties shall jointly request that the Court enter a Final Judgment and Order granting Final Approval of the terms of this Consent Decree.



- B. The Parties will request that this Final Judgment and Order be substantially in the form of Exhibit E and reference this Decree.
- C. The Parties will request that this Court retain jurisdiction to enforce this Consent Decree and to resolve any disputes pursuant to Paragraph XI(B), up to and including any time required to resolve the dispute that extends beyond the term of the Consent Decree as set forth in Paragraph VI.

**XI. DISPUTE RESOLUTION.**

A. Informal Dispute Resolution

- 1. If either Party or a member of the Class believes that a dispute exists relating to the performance or interpretation of this Consent Decree, it shall notify the other Party in writing, describing the dispute and clearly identifying that they are invoking the dispute resolution process.
- 2. The other Party shall respond in writing to such notice within 10 business days of receipt of the notice.
- 3. Within 10 business days of receipt of the response described in the previous paragraph, counsel for both Parties shall meet and confer by telephone or in person and attempt to resolve the issue informally.

B. Resolution by the Court

- 1. If, after completing the steps in Paragraph XI(A), either Party believes that a dispute still exists relating to the performance or interpretation of this Decree, either Party may seek further relief from the Court.
- 2. Should any matter proceed to Court under this Paragraph XI(B), attorneys' fees and costs shall be awarded in accordance with 42 U.S.C. § 12205, and, for the sake of clarity, the attorney's fees cap stated under Section IX.B.2 shall not apply to this Section.

**XII. RELEASES.**

Effective on the date of Final Approval of this Decree, Named Plaintiff, individually and on behalf of all members of the Class, and their executors, successors, heirs, assigns, agents and representatives, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do, to the fullest extent permitted by law, fully and finally release, acquit and discharge KAC, its affiliates and their present, former or future directors, officers, shareholders, owners, managers, supervisors, employees, attorneys, insurers, agents, representatives, and contractors

retained by KAC or the Pepsi Center to perform the work described herein and authorized users of the Pepsi Center, and the respective successors, heirs, employees, attorneys, owners, insurers and assigns of the above from any and all actions, causes of action, claims, charges, demands, losses, judgments, liens, indebtedness and liabilities arising out of the subject matter of the Lawsuit for injunctive relief, declaratory relief, and any attendant costs and attorneys' fees (except those provided in Paragraphs IX or XI above), whether known or unknown, suspected or unsuspected, pursuant to the ADA and state law relating to provision of captioning at Covered Events for members of the Class, asserted or unasserted, in the Lawsuit.

**XIII. BEST INTERESTS OF THE CLASS**

Named Plaintiff and Class Counsel represent and affirm that they are seeking to protect the interests of the entire Class and believe that this Consent Decree is in the best interests of the Class.

**XIV. COMMUNICATIONS.**

Any notice or communication required or permitted to be given to Named Plaintiff or KAC under this Consent Decree shall be given in writing by email and U.S. Mail, addressed as follows:

To the Class:

Amy Robertson  
Civil Rights Education and Enforcement Center  
104 Broadway, Suite 400  
Denver, CO 80203

To KAC:

Kroenke Sports & Entertainment  
1000 Chopper Circle  
Denver, CO 80204  
Attn: Legal Department

With a copy to:  
Susan Klopman  
H&K Law, LLC  
3900 E. Mexico Ave. Ste. 330  
Denver CO 80210

If the above addresses or the appropriate contact change, it is the responsibility of the Party whose address is changing to give written notice of said change to all other Parties within thirty (30) business days following the effective date of said change.

**XV. MODIFICATION OR WAIVER OF DECREE.**

No modification or waiver of this Consent Decree shall be effective unless it is pursuant to Court Order.

**XVI. EXTENSIONS**

The Parties, through their counsel, may agree to any reasonable extensions of time in connection with provisions of this Consent Decree. Such extensions must be in writing and signed by an authorized representative of each Party to be enforceable. However, to the extent a requested extension of time is material to the rights and benefits of the Class, the Parties shall seek the Court's approval of any such requested extensions.

**XVII. SEVERABILITY.**

If any provision or any part of this Consent Decree shall at any time be held unlawful, or inconsistent with applicable law, in whole or in part, under any federal, state, county, municipal or other law, ruling or regulation, then the remaining provisions of this Consent Decree shall remain effective and enforceable.

**XVIII. EXECUTION IN COUNTERPARTS.**

This Consent Decree may be signed in counterpart and shall be binding and effective immediately upon the execution by all Parties of one or more counterparts.

**XIX. DUTY TO SUPPORT AND DEFEND DECREE.**

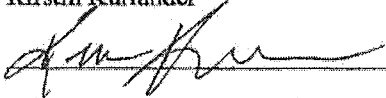
Named Plaintiff and KAC, by their signatures below, each agree to abide by all of the terms of this Consent Decree in good faith and to support it fully, and shall use their best efforts to defend this Decree from any legal challenge, whether by appeal or collateral attack.

**XX. ENTIRE AGREEMENT.**

This Consent Decree contains all the agreements, conditions, promises and covenants among Named Plaintiff, the Class, and KAC regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Consent Decree.

IN WITNESS WHEREOF, the Parties have executed this Consent Decree of the date first written above.

Kirstin Kurlander

  
\_\_\_\_\_

Date: 12-28-17

Kroenke Arena Company

  
\_\_\_\_\_

Name: Stephen L. Stineker

Title: EVP & General Counsel

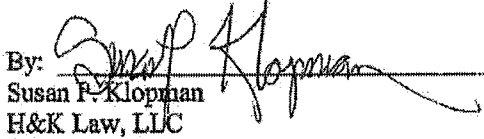
Date: 12/28/17

APPROVED AS TO FORM:

By:   
\_\_\_\_\_

Amy Robertson  
Civil Rights Education and Enforcement Center

Counsel for Named Plaintiff and the Class

By:   
\_\_\_\_\_

Susan P. Klopman  
H&K Law, LLC

Counsel for Kroenke Arena Company, LLC

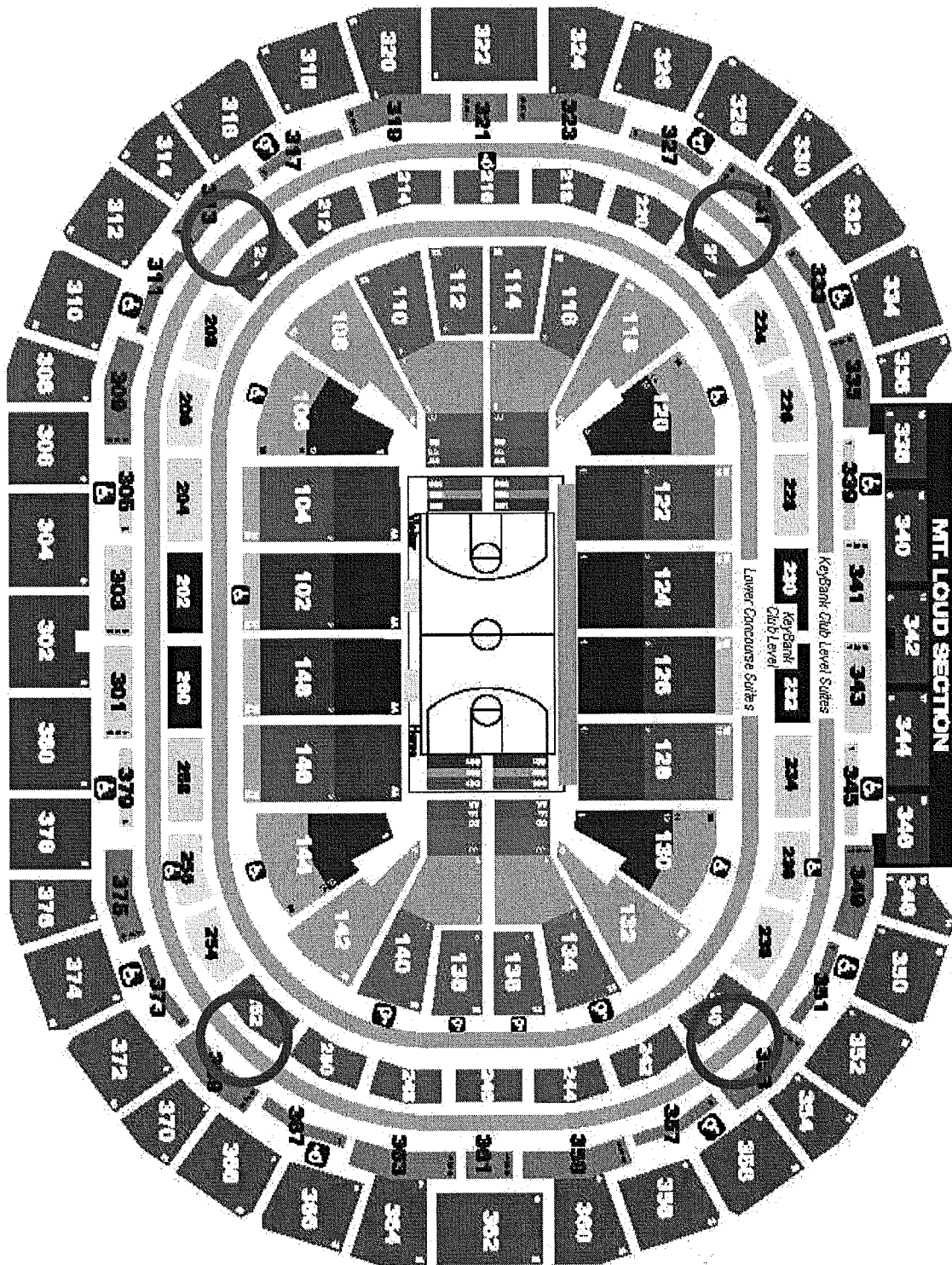
**IT IS SO ORDERED.**

**BY THE COURT:**

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**Wiley Y. Daniel**  
**Senior United States District Judge**

**Dated:**



**EXHIBIT A**

**NOTICE OF CLASS ACTION SETTLEMENT: CAPTIONING OF NON-CONCERT EVENTS AT THE PEPSI CENTER FOR PEOPLE WHO ARE DEAF OR HARD OF HEARING**

If you are deaf or hard of hearing and unable to use assistive listening devices and have attended a non-concert event at the Pepsi Center since November 10, 2014, you may be a member of the proposed Settlement Class affected by this lawsuit. This is a court-authorized notice.

Plaintiffs in the case of *Kurlander v. Kroenke Arena Co*, No. 16-cv-02754-WYD-NYW, in the U.S. District Court for the District of Colorado, alleged that the owners and operators of the Pepsi Center failed to provide effective communication for deaf and hard of hearing patrons, and thus violated the Americans with Disabilities Act, by failing to provide open captioning at non-concert events at the Pepsi Center. The proposed settlement would remedy this situation by, among other things, requiring the Pepsi Center to provide captioning on four LED boards affixed to the front of the third level seating area, and generally visible throughout the arena, for any non-concert event for which the center-hung display is used.

**THIS SETTLEMENT MAY AFFECT YOUR RIGHTS**

Please take notice the Court will hold a hearing for \_\_\_\_\_, at \_\_\_\_\_ in Courtroom A-1002, Alfred A. Arraj United States Courthouse, 901 19th Street, Denver Colorado 80294, before the Honorable Judge Wiley Y. Daniel to decide whether the proposed settlement is fair, reasonable, and adequate, and should be finally approved. Although you are not required to attend, as a Settlement Class Member, you have the right to attend and be heard at this hearing if you file an objection as explained below. At the hearing, the Court will consider any objections to the Settlement. After the hearing, the Court will decide whether to approve the Settlement. The Court will also consider the agreed upon amount to award Class Counsel as reasonable attorneys' fees, costs and litigation expenses. If the Court approves the Settlement, by way of summary, all Class members will be bound by the provisions of the Settlement with respect to claims against the Pepsi Center for injunctive relief, declaratory relief and attorneys' fees and costs under the Americans with Disabilities Act and state law relating to captioning of non-concert events at the Pepsi Center.

If you wish to object to the Settlement or to speak at the hearing, you must send any objection and/or notice of your intent to appear at the hearing to the Court in writing on or before \_\_\_\_\_, and include the case number (Civil Action No. 16-cv-02754-WYD-NDW), to the following address: Clerk of the Court, US Courthouse, 901 19th Street, Denver, CO 80294.

**Please do not contact the Court with questions about this Settlement.** If you have questions, please contact:

**Amy F. Robertson**  
**Civil Rights Education and Enforcement Center**  
104 Broadway, Suite 400  
Denver, CO 80203  
303.757.7901  
[arobertson@creeclaw.org](mailto:arobertson@creeclaw.org)

**FURTHER INFORMATION**

The terms of the Settlement are only summarized in this notice. For the precise and full terms and conditions of the settlement, please see the Settlement Agreement available at [www.creeclaw.org/PepsiCenterSettlement](http://www.creeclaw.org/PepsiCenterSettlement) or by accessing the Court docket on this case through the Court's Public Access to Electronic Records (PACER) system at <https://www.pacer.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294, between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

**EXHIBIT B**

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT**

**ATTENTION: ALL PEOPLE WHO ARE DEAF OR HARD OF HEARING AND  
ATTEND NON-CONCERT EVENTS AT THE PEPSI CENTER**

If you are deaf or hard of hearing and unable to use assistive listening devices and have attended a non-concert event at the Pepsi Center since November 10, 2014, you may be a member of the Class affected by this lawsuit. This is a court-authorized notice.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY  
BE AFFECTED BY LEGAL PROCEEDINGS IN THIS CASE.**

**NOTICE OF CLASS ACTION**

The purpose of this notice is to inform you of a proposed settlement in a pending class action lawsuit brought against Kroenke Arena Company (“KAC”) on behalf of individuals who are deaf or hard of hearing and unable to use assistive listening devices, who have attended a non-concert event at the Pepsi Center since November 10, 2014. The case is entitled *Kurlander v. Kroenke Arena Co.*, No. 16-cv-02754-WYD-NYW, and is pending in the United States District Court for the District of Colorado. The proposed class action settlement (“Settlement”) is set forth in a proposed Consent Decree, which must be approved by the United States District Court.

**BACKGROUND**

This lawsuit alleges that KAC failed to provide effective communication for deaf and hard of hearing patrons, and thus violated the Americans with Disabilities Act, by failing to provide open captioning at non-concert events at the Pepsi Center.

This is a class action. In a class action, one or more people or organizations, called the Class Representative (in this case Kirstin Kurlander), sue on behalf of people who have similar legal claims. All of these people are a Class or Class Members. One court resolves the issues for all Class Members. United States District Judge Wiley Y. Daniel is in charge of this class action.

The Court did not decide in favor of either Plaintiff or KAC in this case. Instead, both sides agreed to a settlement. That way, they avoid the cost, delay, and uncertainty of a trial, and settlement benefits go to the Class Members. The Class Representative and Class Counsel (the attorneys appointed by the Court to represent the Class) think the proposed settlement is in the best interests of the Class Members, taking into account the benefits of the settlement, the risks of continued litigation, and the delay in obtaining relief for the Class if the litigation continues.

**THE CLASS**

The Class all Pepsi Center patrons who are deaf or hard of hearing and unable to hear using assistive listening devices, who have been, since November 10, 2014, or in the future will be, denied full and equal enjoyment of the goods, services, facilities, advantages, or accommodations of the Pepsi Center based on Defendant’s failure to provide open captioning of aural content during non-concert events for which the center-hung display is used.

**EXHIBIT C**



### **SUMMARY OF THE PROPOSED SETTLEMENT**

**The following is a summary of certain provisions of the Settlement. The complete Settlement, set forth in the proposed Consent Decree, is available as set forth below.**

The Settlement requires KAC to caption all aural content spoken over the public address system as well as the lyrics of songs selected at least 24 hours before the event for any non-concert event for which the center-hung display is used. KAC will provide open captioning on four LED displays mounted on the face of the third level of the Pepsi Center and generally visible throughout the arena. Such captioning is to start with the first preseason Avalanche game of the 2018 season. Each board will show two lines of captioning in a font that is at least 10 inches high. Each board will provide space for captioning that is at least 45 characters long.

KAC will provide information concerning captioning at various locations in the Pepsi Center and on relevant websites and publications of the Pepsi Center.

The Settlement requires KAC to retain a third party consultant to monitor the quality of captioning provided pursuant to the Settlement.

### **RELEASE OF CLAIMS**

By way of summary, the Settlement resolves and releases, through its three-year term, all claims for injunctive, declaratory, or other non-monetary relief that were brought, could have been brought, or could be brought in the future relating to or arising from any of KAC's alleged actions, omissions, incidents, or conduct related its failure to provide open captioning at non-concert events. The Agreement does not provide for any monetary relief to the Class, and it does not release any damages claims that Class members may have.

### **REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES**

The Class is represented by the Civil Rights Education and Enforcement ("Class Counsel"). KAC has agreed to pay Class Counsel their reasonable attorneys' fees, expenses, and costs in an amount not to exceed \$200,000 for work through final approval of the Settlement, and amounts not to exceed \$75,000 for work related to monitoring the settlement over the next two years. These amounts are subject to the approval by the Court.

### **FAIRNESS OF SETTLEMENT**

The Class Representatives and Class Counsel have concluded that the terms and conditions of the proposed Settlement are fair, reasonable, adequate, and in the best interests of the Class. In reaching this conclusion, the Class Representatives and Class Counsel have considered the benefits of the settlement, the possible outcomes of continued litigation of these issues, the expense and length of continued litigation, and actual and possible appeals.

**THE COURT'S FINAL APPROVAL/FAIRNESS HEARING**

The Court has preliminarily approved the Settlement, and has scheduled a hearing for \_\_\_\_\_, at \_\_\_\_\_, in Courtroom A-1002, Alfred A. Arraj Courthouse, 901 19th Street, Denver, CO 80294 to decide whether the proposed settlement is fair, reasonable, and adequate, and should be finally approved. Although you are not required to attend, as a Class Member, you have the right to attend and be heard at this hearing, as specified in the next section below. At the hearing, the Court will consider any objections to the Settlement. Judge Daniel will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. The Court will also consider the agreed upon amount to award Class Counsel as reasonable attorneys' fees, costs and litigation expenses. We do not know how long this decision will take.

If the Court approves the Settlement, all Class members will be bound by the specific provisions of the Settlement with respect to claims against KAC, summarized as for injunctive relief, declaratory relief and attorneys' fees and costs under the Americans with Disabilities Act and state law relating to open captioning of non-concert events at the Pepsi Center, and any such claims will be barred for a period of three years.

**OBJECTIONS TO THE SETTLEMENT**

If you wish to object to the Settlement or to speak at the hearing, you must send any objection and/or notice of your intent to appear at the hearing to the Court in writing on or before \_\_\_\_\_, and include the case number (Civil Action No. 16-cv-02754-WYD-NYW), to the following address: Clerk of the Court, US Courthouse, 901 19th Street, Denver, CO 80294.

Please note that the Court can only approve or deny the settlement. The Court cannot change the settlement's terms.

**All objections must be submitted or postmarked on or before \_\_\_\_\_.**

**Any Class Member who does not object at or before the Final Approval Hearing will be deemed to have approved the Settlement and to have waived such objections and shall not be able to make any objections (by appeal or otherwise) to the Settlement.**

**IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT  
APPEAR OR FILE ANYTHING IN WRITING.**

**FURTHER INFORMATION**

The terms of the Settlement are only summarized in this notice. For the precise and full terms and conditions of the settlement, please see the Settlement Agreement available at [www.creeclaw.org/PepsiCenterSettlement](http://www.creeclaw.org/PepsiCenterSettlement), or by accessing the Court docket on this case through the Court's Public Access to Electronic Records (PACER) system at <https://www.pacer.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294, between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

You can also obtain more detailed information about the settlement or a copy of the Settlement Agreement from Class Counsel at any of the following addresses:

Amy F. Robertson  
Civil Rights Education and Enforcement Center  
104 Broadway, Suite 400  
Denver, CO 80203  
303.757.7901  
[arobertson@creeclaw.org](mailto:arobertson@creeclaw.org)

Please do not direct questions to the District Court.

To obtain copies of this Notice or the Consent Decree in alternative accessible formats, please contact Class Counsel listed above.

**List of Organizations to Receive Notice**

<b>Organization</b>	<b>Email</b>
ALDA-Boulder	<a href="mailto:ALDABoulder@gmail.com">ALDABoulder@gmail.com</a>
Atlantis Community	<a href="mailto:andrea@atlantiscommunity.org">andrea@atlantiscommunity.org</a>
Center for Disabilities	<a href="mailto:cfid@ilcpueblo.org">cfid@ilcpueblo.org</a>
Center for Independence	<a href="mailto:info@cfigj.org">info@cfigj.org</a>
Center for People with Disabilities	<a href="mailto:info@cpwd.org">info@cpwd.org</a>
Colorado Association of the Deaf	<a href="mailto:vance.youngs@cadeaf.org">vance.youngs@cadeaf.org</a>
Colorado Commission for the Deaf and Hard of Hearing	<a href="mailto:cliff.moers@state.co.us">cliff.moers@state.co.us</a>
Colorado Cross-Disability Coalition	<a href="mailto:jtvega@ccdconline.org">jtvega@ccdconline.org</a>
Colorado Deaf News	<a href="mailto:editor@coloradodeaf.com">editor@coloradodeaf.com</a>
Colorado Hands and Voices	<a href="mailto:Sara@cohandsandvoices.org">Sara@cohandsandvoices.org</a>
Colorado School for the Deaf and Blind	<a href="mailto:webinfo@csdb.org">webinfo@csdb.org</a>
Colorado Springs Independence Center	<a href="mailto:info@theindependencecenter.org">info@theindependencecenter.org</a>
Connections for Independent Living	<a href="mailto:kasie@connections4il.org">kasie@connections4il.org</a>
Denver Commission for People with Disabilities	<a href="mailto:aisha.rousseau@denvergov.org">aisha.rousseau@denvergov.org</a>
Disability Law Colorado	<a href="mailto:jbusby@disabilitylawco.org">jbusby@disabilitylawco.org</a>
Disabled Resource Services	<a href="mailto:drs@disabledresourceservices.org">drs@disabledresourceservices.org</a>
DOVE	<a href="mailto:avi@deafdove.org">avi@deafdove.org</a>
Hearing Loss Association of American - Colorado	<a href="mailto:HLAACColorado@yahoo.com">HLAACColorado@yahoo.com</a>
Marion Downs Hearing Center	<a href="mailto:mdhc@uch.edu">mdhc@uch.edu</a>
Mile High Independent Living Center	<a href="mailto:oallen@milehighilc.org">oallen@milehighilc.org</a>
PEPNet	<a href="mailto:timothy.chevalier@pepnet.org">timothy.chevalier@pepnet.org</a>
Rocky Mountain Deaf School	<a href="mailto:info@rmds.co">info@rmds.co</a>
Sacred Circle	<a href="mailto:twinklestar2003@comcast.net">twinklestar2003@comcast.net</a>
Southwest Center for Independence	<a href="mailto:kerrie@swilc.org">kerrie@swilc.org</a>
University of Colorado - Disability Resources and Services	<a href="mailto:disabilityresources@ucdenver.edu">disabilityresources@ucdenver.edu</a>
University of Denver - Disability Services Program	<a href="mailto:dsp@du.edu">dsp@du.edu</a>

**EXHIBIT D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 16-cv-02754-WYD-NYW

KIRSTIN KURLANDER,  
on behalf of herself and others similarly situated,

Plaintiff,

v.

KROENKE ARENA COMPANY, LLC

Defendant.

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**ORDER AND JUDGMENT**

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This action came on for hearing before the Court on \_\_\_\_\_ and the issues having been duly heard and the decision having been duly rendered, it is **ORDERED** and **ADJUDGED** that judgment is entered in accordance with the Consent Decree signed by the Court on \_\_\_\_\_ and the settlement reflected there in is given final approval. This Court retains jurisdiction over this matter for the purposes of interpreting and enforcing the Consent Decree.

**IT IS SO ORDERED.**

**BY THE COURT:**

\_\_\_\_\_  
**Wiley Y. Daniel**  
**Senior United States District Judge**

**Dated:**

**EXHIBIT E**